

TOXIC SUBSTANCES CONTROL ACT (TSCA)12-2-A/2-B: Administrative Enforcement: Issuance of Complaints and Signing of Consent Agreements, Agency Representation in Hearings1. AUTHORITY.

- a. To file administrative complaints against alleged violators of the Toxic Substances Control Act (TSCA) for the purpose of proposing civil penalties as provided in the Act, and to negotiate and sign consent agreements memorializing settlements between the Agency and respondents.
- b. To represent the Agency in civil penalty adjudications conducted under the TSCA, to negotiate consent agreements between the Agency and respondents resulting from such enforcement actions, and to represent the Agency in appeals from an administrative determination.

2. TO WHOM DELEGATED.

Director, Land and Chemicals Division.

3. LIMITATIONS.

- a. Exercise of these authorities requires the advance concurrence of the Regional Counsel or designee.
- b. Once the respondent files an answer or fails to file an answer in the specified time period, the person representing the Agency in all negotiations and proceedings must be an attorney in the Office of Regional Counsel.
- c. Exercise of these authorities is subject to the limitations in Headquarters Delegation 12-2-A and 12-2-B. See Additional References 5.b. and 5.c., below.

4. REDELEGATION AUTHORITY. The authorities in 1.b. may be redelegated to the Branch Chief level in the Land and Chemicals Division. The authority in 1.a. to negotiate consent agreements may be redelegated to the Branch Chief level in the Land and Chemicals Division. The other authorities in Section 1 may not be redelegated.

5. ADDITIONAL REFERENCES.

- a. 40 CFR 22, Sections 15 and 16 of TSCA.

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- b. The requirement in Headquarters Delegation 12-2-A to consult with the Assistant Administrator for Enforcement and Compliance Assurance may generally be met as follows. (See 5.c., below, for additional references for cases involving federal entities or federal facilities.) When exercising these authorities to file administrative complaints and to negotiate and sign consent agreements, the Region should consult with the Assistant Administrator for Enforcement and Compliance Assurance or designee in the following circumstances: (1) for complaints and for settlements where the bottom-line penalty is equal to or greater than \$500,000, (2) where a complaint or proposed settlement would not fully comport with applicable penalty policies or recover the full amount of economic benefit, and (3) in cases that involve nationally significant issues. See Additional References in 5.b.i. through 5.b.iv., below. For settlement agreements involving a bottom-line penalty less than \$500,000, with no nationally significant issues, the Region need not consult with the Assistant Administrator for Enforcement and Compliance Assurance, but please see Additional Reference 5.b.v., below.
- i. Memorandum, "OECA/Regional Procedures for Civil Judicial and Administrative Enforcement Case Redelegation", from Robert Van Heuvelen, Director, Office of Regulatory Enforcement, dated November 9, 1994.
  - ii. Current list of nationally significant issues under TSCA: "Final List of Nationally Significant Issues and Process for Raising Issues to TPED," Jesse Baskerville, Director, Toxics and Pesticides Enforcement Division, November 1994; also "Draft Revision of the Nationally Significant Issues List for TSCA, FIFRA, and EPCRA and Process for Raising Issues to TPED," Ann Pontius, Director, Toxics and Pesticides Enforcement Division, March 5, 2002.
  - iii. Memorandum, "Redelegation of Authority and Guidance on Headquarters Involvement in Regulatory Enforcement Cases", from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, dated July 11, 1994.
  - iv. Memorandum, "Redelegation of the Assistant Administrator for OECA's Concurrence Authority in Settlement of certain Civil Judicial and Administrative Enforcement Actions", from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, dated July 8, 1994.

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- v. "Delegation of Settlement Authority to Regional Counsel for Administrative Cases with Civil Penalties of less than \$500,000 and No Nationally Significant Issues", available to Region 5 attorneys as Transmittal 11 in the POLICY.OFF folder of the G: drive, at G:\POLICY.OFF\Trans11.wpd.
- c. When exercising the authorities in Section 1 above in actions that involve federal departments, agencies or instrumentalities; federal facilities; or contractor-operators of federal facilities, the Region should also consult with the Federal Facilities Enforcement Office. See Additional References 5.b.i. (p. 5), above, and 5.c.i. through 5.c.iii.
  - i. Memorandum, "Guidance on Coordination of Federal Facility Enforcement Actions with the Office of Enforcement," from Thomas L. McCall, Jr., Acting Deputy Assistant Administrator for Federal Facilities Enforcement, dated October 22, 1992.
  - ii. "Coordination of Federal Facility Enforcement Actions with OECA" (Granta Y. Nakayama, November 17, 2006, affirming the continued applicability of the 1992 McCall Memorandum above).
  - iii. "Guidance on Coordination of Federal Facility Enforcement Actions with the Office of Enforcement and Compliance Assurance" (Michael M. Stahl, September 17, 1997, affirming and reissuing the 1992 McCall Memorandum above).